

AMENDED IN ASSEMBLY APRIL 29, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 903

Introduced by Assembly Member Steinberg

February 20, 2003

An act to amend Sections 911, 916, and 941 of, and to amend, renumber, and add Section 942 to, the Civil Code, relating to construction defects.

LEGISLATIVE COUNSEL'S DIGEST

AB 903, as amended, Steinberg. Construction defect cases.

Existing law specifies the rights and requirements of a homeowner to bring an action for construction defects.

This bill would ~~require the California Law Revision Commission to conduct a study to determine if the goals of achieving a more fair and prompt resolution process in construction defects cases has resulted from a specified recent legislative enactment. The bill would require the commission to report its findings by March 1, 2004. The bill would also make a specified statement of Legislative intent regarding construction defects cases~~ *revise the definition of builder, as that term is used in provisions regarding construction defect actions. The bill would also recast and reorganize related provisions.*

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature finds and declares, as follows:~~
2

1 *SECTION 1. Section 911 of the Civil Code is amended to read:*

2 911. For purposes of this title, “builder” means ~~a builder,~~
3 ~~developer, or original seller~~ *any entity or individual, including a*
4 *developer, builder, or original seller, who, at the time of sale, was*
5 *in the business of selling residential units to the public, and applies*
6 *to the sale of new residential units on and or after January 1, 2003.*

7 *SEC. 2. Section 916 of the Civil Code is amended to read:*

8 916. (a) If a builder elects to inspect the claimed unmet
9 standards, the builder shall complete the initial inspection and
10 testing within 14 days after acknowledgment of receipt of the
11 notice of the claim, at a mutually convenient date and time. If the
12 homeowner has retained legal representation, the inspection shall
13 be scheduled with the legal representative’s office at a mutually
14 convenient date and time, unless the legal representative is
15 unavailable during the relevant time periods. All costs of builder
16 inspection and testing, including any damage caused by the builder
17 inspection, shall be borne by the builder. The builder shall also
18 provide written proof that the builder has liability insurance to
19 cover any damages or injuries occurring during inspection and
20 testing. The builder shall restore the property to its pretesting
21 condition within 48 hours of the testing. The builder shall, upon
22 request, allow the inspections to be observed and electronically
23 recorded, videotaped, or photographed by the claimant or his or
24 her legal representative.

25 (b) Nothing that occurs during a builder’s or claimant’s
26 inspection or testing may be used or introduced as evidence to
27 support a ~~spoliation~~ *spoliation* defense by any potential party in
28 any subsequent litigation.

29 (c) If a builder deems a second inspection or testing reasonably
30 necessary, and specifies the reasons therefor in writing within
31 three days following the initial inspection, the builder may conduct
32 a second inspection or testing. A second inspection or testing shall
33 be completed within 40 days of the initial inspection or testing. All
34 requirements concerning the initial inspection or testing shall also
35 apply to the second inspection or testing.

36 (d) If the builder fails to inspect or test the property within the
37 time specified, the claimant is released from the requirements of
38 this section and may proceed with the filing of an action. However,
39 the standards set forth in the other chapters of this title shall
40 continue to apply to the action.

(e) If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier, warranty company, or service company, responsible for its contribution to the unmet standard, the builder shall provide notice to that person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any, shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision shall not apply to the builder's insurance company. Except with respect to any claims involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual product manufacturer, or material supplier of any liability under an action brought by a claimant.

SEC. 3. Section 941 of the Civil Code is amended to read:

941. (a) Except as specifically set forth in this title, no action may be brought to recover under this title more than 10 years after substantial completion of the improvement but not later than the date of recordation of a valid notice of completion.

(b) As used in this section, "action" includes an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this title, except that a cross-complaint for indemnity may be filed pursuant to subdivision (b) of Section 428.10 of the Code of Civil Procedure in an action which has been brought within the time period set forth in subdivision (a).

(c) The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to make a claim or bring an action.

(d) Sections 337.15 and 337.1 of the Code of Civil Procedure shall not apply to actions under this title.

(e) Existing statutory and decisional law regarding tolling of the statute of limitations shall apply to the time periods for filing an action or making a claim under this title, except that repairs made pursuant to Chapter 4 (commencing with Section 910), with

1 the exception of the tolling provision contained in Section 927, do
2 not extend the period for filing an action, or restart the time
3 limitations contained in subdivisions (a) or (b) if 7091 of the
4 Business and Professions Code. If a builder arranges for a
5 contractor to perform a repair pursuant to Chapter 4 (commencing
6 with Section 910), as to the builder the time period for calculating
7 the statute of limitation in subdivisions (a) or (b) if Section 7091
8 of the Business and Professions Code shall pertain to the
9 substantial completion of the original construction and not to the
10 date of repairs under this title. The time limitations established by
11 this title do not apply to any action by a claimant for a contract or
12 express contractual provision. Causes of action and damages to
13 which this chapter does not apply are not limited by this section.
14 ~~In order to make a claim for violation of the standards set forth in~~
15 ~~Chapter 2 (commencing with Section 896), a homeowner need~~
16 ~~only demonstrate, in accordance with the applicable evidentiary~~
17 ~~standard, that the home does not meet the applicable standard,~~
18 ~~subject to the affirmative defenses set forth in Section 945.5. No~~
19 ~~further showing of causation or damages is required to meet the~~
20 ~~burden of proof regarding a violation of a standard set forth in~~
21 ~~Chapter 2 (commencing with Section 896), provided that the~~
22 ~~violation arises out of, pertains to, or is related to, the original~~
23 ~~construction.~~

24 *SEC. 4. Section 942 of the Civil Code is amended and*
25 *renumbered to read:*

26 **942.**

27 **943.** (a) Except as provided in this title, no other cause of
28 action for a claim covered by this title or for damages recoverable
29 under Section 944 is allowed. In addition to the rights under this
30 title, this title does not apply to any action by a claimant to enforce
31 a contract or express contractual provision, or any action for fraud,
32 personal injury, or violation of a statute. Damages awarded for the
33 items set forth in Section 944 in such other cause of action shall be
34 reduced by the amounts recovered pursuant to Section 944 for
35 violation of the standards set forth in this title.

36 (b) As to any claims involving a detached single-family home,
37 the homeowner's right to the reasonable value of repairing any
38 nonconformity is limited to the repair costs, or the diminution in
39 current value of the home caused by the nonconformity, whichever

1 is less, subject to the personal use exception as developed under
2 common law.

3 *SEC. 5. Section 942 is added to the Civil Code, to read:*

4 *942. In order to make a claim for violation of the standards set*
5 *forth in Chapter 2 (commencing with Section 896), a homeowner*
6 *need only demonstrate, in accordance with the applicable*
7 *evidentiary standard, that the home does not meet the applicable*
8 *standard, subject to the affirmative defenses set forth in Section*
9 *945.5. No further showing of causation or damages is required to*
10 *meet the burden of proof regarding a violation of a standard set*
11 *forth in Chapter 2 (commencing with Section 896), provided that*
12 *the violation arises out of, pertains to, or is related to, the original*
13 *construction.*

14 ~~(a) It is the intent of the Legislature that this act improve the~~
15 ~~procedures for the administration of civil justice, including~~
16 ~~standards and procedures for early disposition of construction~~
17 ~~defects cases.~~

18 ~~(b) In an effort to ensure that the intent of the Legislature has~~
19 ~~been accomplished with the enactment of Chapter 722 of the~~
20 ~~Statutes of 2002, the California Law Revision Commission shall~~
21 ~~conduct a study to determine if the goals of achieving a more fair~~
22 ~~and prompt resolution process has resulted from the enactment of~~
23 ~~Chapter 722 of the Statutes of 2002. The California Law Revision~~
24 ~~Commission shall provide its findings to the Chief Clerk of the~~
25 ~~Assembly and the Secretary of the Senate on or before March 1,~~
26 ~~2004.~~

